

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

AMBER WENZEL,

Plaintiff,

CASE NO. 1:20-cv\_\_\_\_\_

v

HON. \_\_\_\_\_

PHILLIP AND KRISTA TREMONTI,

Defendants.

**COMPLAINT AND JURY DEMAND**

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Matthew L. Wikander (P65160)  
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**SUMMARY /OVERVIEW**

Defendants, Phillip and Krista Tremonti, own two adjoining parcels in Antrim County, Michigan. They utilize one property as their personal residence. The other property is used as a short-term rental. The Defendants offer the amenities of both properties – including the zip-line apparatus affixed to their personal residence – to renters. Plaintiff, Amber Wenzel, sustained a horrific fracture to her left ankle/leg after falling from the zip-line apparatus at a height of some five feet while traveling at a high rate of speed. Plaintiff was encouraged and permitted to ride the zip-line apparatus despite the fact that Defendants did not provide a helmet, harness or *any other safety device*. Indeed, Defendants made affirmative misrepresentations regarding the safety of the zip-line apparatus in order to induce Plaintiff to ride same. Plaintiff seeks to recover damages in excess of the \$75,000.00 minimum for diversity jurisdiction as a result of the traumatic injuries she sustained.

**PARTIES, JURISDICTION AND VENUE**

NOW COMES Plaintiff, Amber Wenzel, by and through her attorneys, SMITH HAUGHEY RICE & ROEGGE, and for her Complaint against Defendants, Phillip and Krista Tremonti, states as follows:

1. Plaintiff Amber Wenzel (hereinafter “Plaintiff” and/or “Amber Wenzel”) is, and was at all relevant times to this action, an individual residing in Cook County, Illinois.

2. Upon information and belief, Defendants Phillip and Krista Tremonti (hereinafter individually referenced as “Phillip Tremonti” or “Krista Tremonti” and collectively referenced as “Defendants”) are, and were at all times relevant to this action, residents of Antrim County, Michigan.

3. Defendants are owners of real properties located at 7887 Helena Road and 7819 Helena Road, Township of Helena, Antrim County, Michigan (collectively “Defendants’ Properties”) and, at all relevant times, said real properties were operated, managed, leased and/or maintained by Defendants.

4. The events giving rise to this Complaint and cause of action described below occurred within Antrim County, Michigan at Defendants’ Properties.

5. The amount in controversy exceeds \$75,000.00.

6. This Court has jurisdiction over this matter pursuant to 28 USC § 1332 (diversity).

7. Venue is proper in this Court pursuant to 28 USC § 1391.

#### **GENERAL ALLEGATIONS**

8. In August of 2020, Plaintiff and her friends, on the one hand, and Defendants, on the other hand, entered into an agreement whereby Plaintiff and her friends could stay in the home at 7819 Helena Road and use the amenities of Defendants’ Properties over the course of a long weekend in exchange for payment of a rental fee.

9. By virtue of this rental agreement and Michigan Law, Plaintiff and her friends were invitees of Defendants over the course of their stay.

10. On August 19, 2020, Defendants offered to Plaintiff and her friends the use of the zip-line apparatus installed to their personal residence at 7887 Helena Road.

11. Phillip Tremonti represented that riders of the zip-line apparatus only needed to “hold on” for 4-5 seconds and that “no one has ever fallen off before.”

12. Phillip Tremonti offered no instruction, training or safety precautions to Plaintiff or her friends and no rider was provided with a helmet, harness or any other safety device.

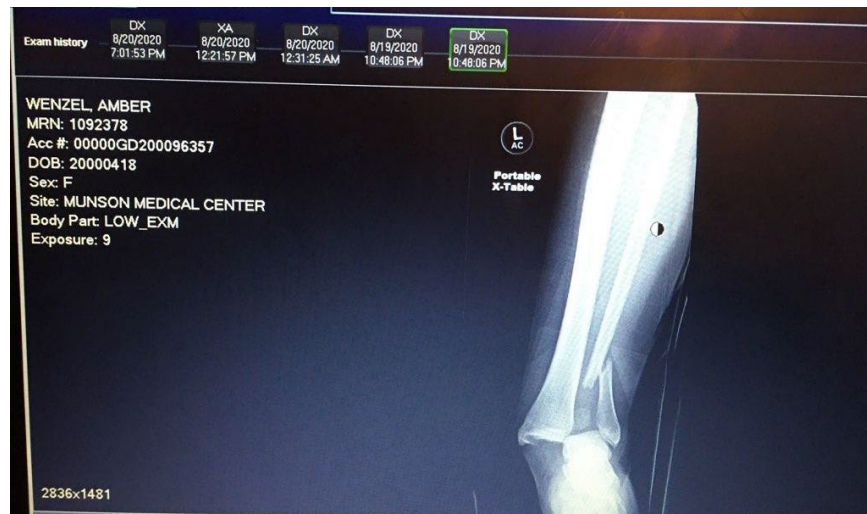
13. As Plaintiff rode the zip-line apparatus, her hand slipped on the apparatus’ handlebar. Because she did not have a harness or any other safety device, Plaintiff fell some five feet to the ground below her while traveling at a high rate of speed, causing her to sustain severe, disabling injuries and resulted in ongoing, permanent disability.

14. Amber Wenzel’s injuries, harms and damages resulting from the accident include, but are not limited to, the following:

- a. Lateral left ankle dislocation;
- b. Comminuted distal left fibular shaft fracture with lateral displacement and angulation;
- c. Posterior malleolus fracture with superolateral displacement;
- d. Open reduction internal fixation of left bimalleolar ankle fracture;
- e. Malreduction of left fibula and persistently unstable syndesmosis;
- f. Revision open reduction and internal fixation of left fibula;
- g. Open reduction and internal fixation of left posterior malleolus, thereby repairing left syndesmotic injury;
- h. Increased edema was noted around left ankle joint;
- i. Left foot deformity status post fall from zip line;
- j. Left ankle pain secondary to recent fall from a zip-line;
- k. Severe sprain or right ankle with resulting edema;
- l. Past, present and future pain and suffering as a direct and proximate result of the injuries sustained;
- m. Loss of life’s enjoyment, including denial of social pleasures and enjoyments;

- n. Physical, mental, emotional and psychological pain and suffering;
- o. Fright, shock, humiliation, and embarrassment;
- p. Past, present and future medical treatment;
- q. Additional injuries which may manifest themselves in the future; and
- r. Other direct and consequential damages.

15. The following photographs show the injuries sustained to Plaintiff's left ankle and leg:





**COUNT I – NEGLIGENCE & PREMISES LIABILITY OF DEFENDANTS**

16. Plaintiff hereby adopts and incorporates the allegations contained in the preceding paragraphs as though fully set forth herein.

17. The zip-line apparatus affixed to Defendants' residence at 7887 Helena Road, together with the lack of helmet, harness or other safety device, constitutes a dangerous condition

or defect which put Plaintiff and other foreseeable users of the zip-line apparatus at unreasonable risk.

18. The Defendants created the dangerous condition and defect.

19. The Defendants knew or should have known of the dangerous condition and defect.

20. The Defendants had a duty to protect Plaintiff, an invitee and lessee of Defendants' Properties, from dangerous conditions and defects which might result in injury.

21. The Defendants had a duty to inspect the zip-line apparatus and discover the dangerous conditions and defects but failed to do so.

22. The Defendants had a duty to maintain the zip-line apparatus in a reasonably fit condition and to provide safety devices and/or other modifications to support the normally imposed loads and withstand the expected and intended forces but failed to do so.

23. Had Defendants inspected the zip-line apparatus and provided safety devices and/or other modifications to support the normally imposed loads and withstand the expected and intended forces, Plaintiff would not have fallen from the zip-line apparatus and would not have been injured.

24. The Defendants had a duty to warn Plaintiff of the hazards associated with using the zip-line device and failed to do so. Further, Defendants affirmatively misrepresented the extent of the risks associated with the zip-line apparatus.

25. The Defendants had a duty to maintain the zip-line in a condition that rendered it fit for use and failed to do so.

26. The zip-line was not fit for use, but was rather defectively installed and maintained, which condition directly and proximately caused Plaintiff to fall and resulted in her injury.

27. The failure of Defendants to inspect, discover, maintain, instruct, warn and provide safety devices relative to the zip-line apparatus directly and proximately caused Plaintiff to fall and resulted in her injury and the damages set forth herein.

WHEREFORE, Plaintiff requests that this Court enter judgment in her favor against the Defendants, jointly and severally, for all compensatory and exemplary damages to which she is determined to be entitled, together with interest, costs and attorney fees.

**COUNT II – VIOLATION OF STATUTE (MCL 554.139)**

28. Plaintiff hereby adopts and incorporates the allegations contained in the preceding paragraphs as though fully set forth herein.

29. Pursuant to MCL 554.139(1)(a) (hereinafter the “Statute”), the Defendants covenanted that Defendants’ Properties, including all common areas, were fit for the used intended by lessees and invitees.

30. The Statute provides that its provisions are to be liberally construed.

31. That Defendants violated the Statute because the zip-line apparatus was not fit for the use intended.

32. The Defendants’ violation of the Statute directly and proximately caused Plaintiff to fall, resulting in her injury and the damages set forth herein.

WHEREFORE, Plaintiff requests that this Court enter judgment in her favor against the Defendants, jointly and severally, for all compensatory and exemplary damages to which she is determined to be entitled, together with interest, costs and attorney fees.

DATED: October 27, 2021

/s/ Christopher S. Berry

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**JURY DEMAND**

NOW COMES Plaintiff, Amber Wenzel, by and through her attorneys, SMITH HAUGHEY RICE & ROEGGE, and hereby demands a trial by jury of the issues in this case.

DATED: October 27, 2021

/s/ Christopher S. Berry

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